

DOROTHY LANGLEY

IBLA 82-509

Decided January 31, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting, in part oil and gas lease offer. U-45424.

Affirmed.

1. Mineral Leasing Act: Combined Hydrocarbon Leases -- Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Lands Subject to -- Tar Sands

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

APPEARANCES: Dorothy Langley, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Dorothy Langley has appealed from a January 28, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting in part her noncompetitive simultaneous oil and gas lease offer for parcel number UT 27. 1/

1/ Parcel UT 27 assigned serial number U-45424 included 1,920 acres of land; however, the BLM, decision of Jan. 28, 1982, reduced the acreage to 640 acres.

That decision in part states the following:

On August 26, 1980, the Secretary of the Interior directed this office to halt issuance of oil and gas leases in designated tar sand areas. Further, enactment of the Hydrocarbon Leasing Act of 1981, P.L. 97-78, effective November 16, 1981, precludes issuance of noncompetitive oil and gas leases within special tar sand areas. The Act states " * * * if the lands to be leased are within a special tar sand area, they shall be leased to the highest responsible qualified bidder by competitive bidding * * * ."

Secs. 27, and 34, T. 20 S., R. 11 E., SLM, Utah, are within the San Rafael Swell Designated Tar Sand area established by the Geological Survey effective November 10, 1980. These lands were included in parcel UT 27, assigned serial number U-45424, in the January 1980 Simultaneous Filings of Oil and Gas Offers.

Inasmuch as oil and gas lease offer U-45424 did not issue prior to November 16, 1981, it is hereby rejected to the lands within the designated tar sand area as noted above.

A lease under U-45424 will issue for the following lands:

T. 20 S., R. 11 E., SLM, Utah

Sec. 25, all.

Containing 640.00 acres, Annual Rental \$640.00.

By notice dated June 27, 1980, BLM notified appellant that her simultaneous oil and gas drawing entry card was drawn with first priority in the January 1980 drawing. She submitted the first year rental payment for the 1,920 acres and the completed certification of qualifications on July 14, 1980.

On August 26, 1980, then Under Secretary James A. Joseph ordered a halt to the issuance of over-the-counter and simultaneous oil and gas leases in the tar sands area identified on map 47, Utah Department of Natural Resources. This action was taken, among other reasons, in anticipation of the enactment of H.R. 7242, a bill which would amend the Mineral Leasing Act with particular reference to oil and gas and tar sands. Pursuant to Under Secretary Joseph's order, the barrier against issuance of oil and gas leases in the designated tar sands areas (DTSA's) was to continue in effect "until two months after the enactment of H.R. 7242 or similar legislation or the adjournment of this Congress sine die, whichever is earlier."

In a subsequent memorandum dated May 28, 1981, from Assistant Secretary Garrey E. Carruthers to the Director, BLM, 2/ the directive of former Under Secretary Joseph to suspend issuance of noncompetitive oil and gas leases in DTSA's was discussed. While general continuing support for that policy and its objectives was indicated, the last paragraph of the Assistant Secretary's memorandum addressed the disposition of one particular

2/ The distribution list shows that a copy of this memorandum was sent to BLM's Utah State Director.

group of oil and gas leases which had not been specifically dealt with in the directive by former Under Secretary Joseph. That paragraph states:

We continue to remain interested in preserving the opportunity to issue tar sand leases without encumbering oil and gas leases in the same acreage. Even so, there are a small number of oil and gas lease applicants whose offers were submitted prior to August 26, 1980, but whose leases have not been issued because of the Under Secretary's directive. In the interests of equity, please direct the Utah State Office to proceed with issuance of oil and gas leases in DTSA's applied for prior to August 26, 1980. Disposition of applications received on or after that date will await further policy review.

Appellant's oil and gas lease offer could have been included in the group to be issued leases pursuant to this instruction. However, before any action was taken by BLM with respect thereto, the Congress enacted H.R. 3975 as the Combined Hydrocarbon Leasing Act (CHLA), which was signed by the President on November 16, 1981. That legislation amended numerous sections of the Mineral Lands Leasing Act of 1920, so as to provide for the issuance of "combined hydrocarbon leases" in DTSA's areas, such leases to encompass as "oil" all "nongaseous hydrocarbon substances other than those leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons)." The amendment also required that lands in special tar sand areas "shall be leased to the highest responsible qualified bidder by competitive bidding."

In her statement of reasons appellant argues that she is entitled to a lease for the full acreage because she received first priority for Federal lease U-45424 and paid the rental required, and that BLM's delay in acting on her offer until after the effective date of CHLA denied her the right to acquire the lease. On March 16, 1982, she submitted an additional statement of reasons which included a certified copy of the BLM serial register page relating to lease U-45424, which shows an entry dated September 23, 1981, under the action taken column which reads: "[L]ease issued effective October 1, 1981. Appellant concludes that this entry, predating the enactment of CHLA, supports her position that she is entitled to a lease for 1,920 acres."

[1] The Secretary of the Interior is invested by the Mineral Leasing Act of 1920 with discretionary authority to lease or not to lease Federal public land which is otherwise available for oil and gas leasing. 30 U.S.C. § 226(a) (1976); Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960); Justheim Petroleum Co., 67 IBLA 38 (1982); Natural Gas Corp. of California, 59 IBLA 348 (1981), and cases cited therein. The mere fact that appellant's oil and gas lease offer was pending at a time when the land was available for leasing does not invest the offeror with any legal or equitable title, claim, interest, or right to receive the lease where, during the pendency of the offer, the land becomes unavailable to such leasing either by reason of the exercise of Secretarial discretion or by operation of law. The offer to lease is a hope, or expectation, rather than a valid claim against the Government. Udall v. Tallman,

supra; McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, supra; D. R. Gaither, 32 IBLA 106 (1977), aff'd sub nom. Rowell v. Andrus, Civ. No. 77-0106 (D. Utah Apr. 3, 1977), Duncan Miller, 20 IBLA 1, appeal dismissed, Miller v. Secretary of the Interior, Civ. No. 75-0905 (D.D.C. Sept. 2, 1975).

Beyond the question of Secretarial discretion, ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Department of the Interior is to administer them in accordance with the dictates of the legislative branch. Since appellant's lease offer was still pending on the date CHLA took effect, and was nonconforming thereunder, it must be rejected in part. No oil and gas lease may issue to appellant for the total oil and gas lease offer, because the lands requested in part are within a special tar sand area, which are leasable only through competitive bidding. Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93, 89 I.D. 82 (1982).

Appellant places too much emphasis on the fact that the entry by BLM on the serial register page indicated that the full lease (U-45424) was issued effective October 1, 1981. Under 43 CFR 3112.4-2 it is the signing of the offer by the authorized BLM officer which constitutes acceptance of the applicant's offer and creates a binding contract. Accordingly, the entry was obviously an error, as evidenced by the fact that no such lease was actually issued.

The failure of BLM to act on the subject oil and gas lease offer until after enactment of CHLA, precludes BLM from lawfully issuing the full lease thereafter. CHLA changed the status of that portion the land within the special tar sand areas designated, and foreclosed their availability to the issuance of noncompetitive oil and gas leases as a matter of law. Larry E. Clark, 66 IBLA 23 (1982). Therefore, BLM properly rejected in part appellant's oil and gas lease offer.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

